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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. A-1087

WILLIE LEE GORDON, ET AL.,
Petitioners,
VERSUS
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 612, ET AL.,
Respondents,
and
WILLIE LEE GORDON, ET AL.,
Petitioners,
VERSUS
C. J. HINES, McKINLEY MARZETTE, and
MARCELLUS HODGE,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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May, 1974

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LABORERS' INTERNATIONAL UNION OF NORTH AMERICA,
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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioners, Willie Lee Gordon, et al., C. J. Hines, McKinley Marzette and Marcellus Hodge, members and officers of Local 612 Laborers' International Union of North America, pray that a Writ of Certiorari issue to the United States Court of Appeals, Tenth Circuit, to review the opinion and judgment of the United States Court of Appeals for

the Tenth Circuit of November 21, 1973, affirming the judgment of the United States District Court for the Western District of Oklahoma, upholding the imposition of a trustee on Local 612 Laborers' International Union of North America by Laborers' International Union of North America. Rehearing denied February 8, 1974, extension granted to June 3, 1974, in which to file Petition for Certiorari by order dated May 10, 1974.

OPINIONS BELOW

The Opinion of the trial court is Appendix A, hereto attached. The Opinion of the United States Court of Appeals, Tenth Circuit, is not officially reported, but is hereby attached as Exhibit B.

The Order Denying the Petition for Rehearing is Exhibit C.

JURISDICTION

The Opinion of the United States Court of Appeals, Tenth Circuit, was entered on November 21, 1973 (Appendix B). A Petition for Rehearing was filed December 20, 1973, and denied February 8, 1973 (Appendix C). The jurisdiction of this Court is invoked under Title 28 U.S.C.A. §1254 and Rule 19 of the Rules of the Supreme Court of the United States.

QUESTIONS PRESENTED

1.

The Constitution of a national labor organization is subservient to Federal law and where a labor organization's Constitution requires a local union to join a District Coun-

cil for all purposes to include naming the District Council as the exclusive bargaining agent for that local such union Constitutional provision is in violation of Title 29 U.S.C.A. §158 and cannot be enforced by the imposition of a trustee by internal organization procedures.

2.

The NLRB has exclusive jurisdiction to determine a bargaining agent and where a local has been certified and historically recognized as a bargaining agent for over 20 years the International cannot force the local to change the bargaining agent by the imposition of a trustee for the failure to join the District Council.

3.

The imposition of a trustee for the failure of a local to fully comply and fully join a District Council is violative of Title 29 U.S.C.A. §462.

4.

When a local union has been certified and historically recognized as a bargaining agent the International union cannot impose a trustee over the local for its failure to comply with national bargaining objectives of the national union under Title 29 U.S.C.A. §462.

5.

The Constitution of the Oklahoma District Council of the Laborers' International Union of North America governing representation on the District Council, constitutes a violation of 29 U.S.C.A. §411 which requires equal repre-

sentation in labor organizations and is properly the subject matter of an action by the officers and individual union members under Title 29 U.S.C.A. §412.

6

The trial court and the United States Court of Appeals, Tenth Circuit erred in relying upon *American Federation of Musicians* v. *Wittstein*, 379 U.S. 171 (1964), as the intermediate body in this case is the functional equivalent of a local union and weighted representative representation does not comply with Title 29 U.S.C.A. §411.

STATUTES INVOLVED

Title 29 U.S.C.A. §§157, 158, 159, 411, 412, and 462.

STATEMENT OF THE CASE

A. Statement of relevant facts

The Laborers' International was organized in 1905 as the International Hod Carriers and Building Laborers Union. The name was changed to its present name on September 20, 1965. Local 612 was organized in Oklahoma City, Oklahoma, May 21, 1920. On October 7, 1968, an application was filed with the Laborers' International by seven of its nine locals in Oklahoma requesting the issuance of a District Council charter and the establishment of the District Council. On October 9, 1968, a District Council charter was issued by the Laborers' International establishing the Oklahoma Laborers' District Council and said District Council has territorial jurisdiction over the entire State of Oklahoma. Article 19, Section 2(a) Section 3 of the Laborers' International Constitution provides with reference to the formation of District Council as follows:

"Section 2. Such charters may be issued:

"(a) Upon application of a number of affiliated Local Unions in an area when it is deemed advantageous and beneficial to said Local Unions to combine their economic power, effort and strength into a unit which would tend to enhance, promote and conserve their welfare and interest and that of their members; or * * *

"Section 3. When a District Council charter is issued, all Local Unions within its territorial and/or craft jurisdiction shall affiliate and remain affiliated with said District Council."

Article II, Section 2 of the Uniform District Council Constitution provides the District Council among other acts may do the following:

"(a) To negotiate, bargain for and enter into understandings and agreements with employers, for and in behalf of its affiliated Local Unions and to enforce and police the observance thereof by employees and employers, Local Unions and their members * * *

* * * * * *

"(c) To establish and regulate the amount of initiation fee and dues to be paid by members to its affiliated Local Unions within the limits provided in the International Constitution."

Local 612 opposed the formation of the District Council for the following reasons:

1. Local 612 desired to remain its own bargaining agent, to set its own dues and to enforce its own agreements.

2. Objected to the distribution of representation on the District Council and contended that if they were

members of said District Council the voting power or representation on the District Council should be on a proportionate basis, based upon membership to assure that the one-man one-vote rule was recognized through the hierarchy of the Laborers' International.

At the time of the establishment of the District Council there were nine local unions in the State of Oklahoma. Although the officers of Local 612 have attended the District Council meetings, without the authority of the Local 612, Local 612 has steadfastly maintained its position that it would not approve the District Council and the District Council was not the bargaining agent for Local 612.

Local 612 opposed the establishment of the District Council. However, the officers have attended council meetings as its establishment was under orders of the International. Local 612 prior to the formation of the District Council was the exclusive bargaining agent with the Associated General Contractors of America, Oklahoma Chapter (hereafter referred to as AGC).

The 1966 convention of the Laborers' International adopted Uniform Collective Bargaining Goals for all affiliates in the entire membership in the International. These included provisions for health and welfare, pension and training coverage under the collective bargaining agreements.

In October 1968, a move was initiated by the Oklahoma District Council to require all locals to extend their bargaining to include welfare and pension plans, and to bargain for a common expiration date of all locals within the State of Oklahoma.

Local 612 wanted to reopen the contract which was to expire on June 1, 1972. Local 612, on November 30, 1971, the last day prior to the six months' expiration period, served notice on the AGC of Local 612's desire to reopen the contract. Thereafter, the union in open meeting, nominated from the floor and elected three members, Mr. Willie Gordon, Mr. Thurman Cummings and Mr. Edward Ward, to constitute a bargaining committee to negotiate with the employers represented by the AGC.

Article IV, Sec. E(2) (a), page 13 of the Local Union Constitution, provides as follows:

> "Unless otherwise provided, negotiations with employers shall be through a Negotiating Committee of the Local Union, of which the Business Manager shall be chairman ex-officio."

The officers of Local 612 informed R. P. Vinall, the Laborers' International representative, and Jack Ridenour, President of the District Council, they desired their assistance in negotiating this contract. The officers requested them to appear before the members of Local 612 and explain any provisions they might have to include in the contract. Local 612 was informed that both of these officers had to be somewhere else and they did not assist the local union. There is a dispute at this point between Mr. Ridenour and Mr. Hodges (the president of Local 612) as to whether or not Mr. Ridenour refused to assist them or because of prior commitments he was unable to do so; in any event, Local 612 proceeded to negotiate a new contract with the AGC in keeping with the previous position to be their own bargaining agent, fully aware of the mandate of the 1966

convention, aware of the District Council's desire for common expiration dates of the contracts of the nine Locals in the State of Oklahoma, and more importantly aware of the desire of the membership of Local 612 *NOT* to become affiliated with the District Council for collective bargaining purposes. Local 612 did approve the contract brought back by this committee in open meeting. The contract was then forwarded to the Laborers' Craft Board in Washington to obtain the approval of that Board as required by Phase II of the wage freeze then in force by Presidential Proclamation. The contract was subsequently approved by the Temporary Emergency Court of Appeals as not violating any wage guidelines.

On April 10, 1972, Local Union 612 was notified to attend a hearing of the General Executive Board of the Laborers' International sitting at the LaSalle Hotel in Chicago to show why Local 612 should not be placed under the trustee as provided in Section VII of the International Constitution. Local 612 filed a response in which the facts surrounding the renegotiation of the contract complained of by the Laborers' International were set out, as well as why the contract had to be negotiated when it was, and ended up by asking the Executive Board to hold a hearing in Oklahoma City where the local membership would have a chance to express themselves. This would give the membership an opportunity to appear as they were financially unable to travel to Chicago from Oklahoma City. As a result of this hearing in Chicago the union was placed under a trustee for signing the March 1972 contract.

A trustee was imposed by the general executive board and this action prompted the filing of the Cross-Complaint

for permanent injunction by C. J. Hines, et al., against the Laborers' International and the Amendment to the Complaint filed by Willie Gordon, et al., requesting a permanent injunction on the imposition of a trustee.

As a result of the Court's Order of November 1, 1972, Local 612 is presently operated by a trustee.

B. Nature of the Case, Disposition in the court below and Course of Prior Proceedings in the case

The Laborers' International Union of North America will be referred to as Laborers' International, the Oklahoma Laborers' District Council will be referred to as District Council, and Local 612 of Laborers' International Union of North America will be referred to as Local 612.

On October 20, 1970, Petitioner Willie Lee Gordon and others, being five members of Local 612, Laborers' International Union of North America, filed a Complaint against the Oklahoma Laborers' District Council of Laborers' International Union of North America, Laborers' International Union of North America, and certain named officers, C. J. Hines, Marcellus Hodge, J. S. Henderson. McKinley Marzette, being the successor in office to J. S. Henderson, by Order of the Court, was made a party to this action. Willie Lee Gordon, et al., sought an Order authorizing Local 612 to withdraw as a member of the Oklahoma Laborers' District Council and to restore the rights of Local 612 as they existed prior to November 16, 1968, or in the alternative, Local 612 receive additional delegates to the council so that it would be represented in direct proportion to its membership.

On May 4, 1972, Petitioner Willie Lee Gordon, et al., filed an amendment to the Complaint. The Amendment to the Complaint of Petitioner Willie Lee Gordon alleged on April 26, 1972, the International Union had improperly imposed a trustee upon Local 612 in violation of 29 U.S.C.A. §462. Petitioners C. J. Hines, et al., filed a Cross-Complaint on May 4, 1972, for a permanent injunction against the International on behalf of themselves individually and officers of Local 612, alleging that on April 26, 1972, the International had improperly imposed a trusteeship on Local 612 in violation of Title 29 U.S.C.A. §462. A Motion for a Preliminary Injunction was filed and an evidentiary hearing held. On May 9, 1972, the Court entered a preliminary injunction enjoining such trusteeship pending the conduct of a trial on the merits. On August 8, 1972, in Civil Action No. 72-554, the Associated General Contractors of America, Inc., Oklahoma Chapter Builders Division, instituted an action against Local 612 seeking a declaration of the validity of a collective bargaining agreement entered into on March 13, 1972, between the Associated General Contractors of America, Inc., Oklahoma chapter, and Local 612. At the time case number 72-544 was filed, this action was pending a final decision. The trial court found the two cases arose out of a common set of facts, raised common questions of law, and on September 27, 1972, entered an Order consolidating and merging the causes for all purposes, including trial and disposition. A trial was conducted on September 29, 1972. The trial court entered its opinion November 1, 1972 (App. A). An Appeal was filed by Willie Lee Gordon, et al., in case number 73-1111, United States Court of Appeals, Tenth Circuit, and an appeal was filed by C. J.

Hines, et al., which was docketed as case number 73-1112, United States Court of Appeals, Tenth Circuit. An Appeal was filed by the Associated General Contractors to the Temporary Emergency Court of Appeals and that case was docketed as case number 10-2, and has been decided. The issues involved in this case are those issues raised in the original case in the trial court, being 70-520. The trial court denied the permanent injunction and also denied any claim for relief under the Complaint originally filed in case number 70-520, the case below.

REASONS FOR GRANTING THE WRIT

A

The decision of the United States Court of Appeals, Tenth Circuit, is repugnant to and in conflict with the decisions of the Supreme Court of the United States.

B

The case presents a Federal question of obvious national importance in that International Unions rely upon representative representation on intermediate bodies.

C

When an intermediate body of an International union is the functional equivalent of a local union, weighted representation does not satisfy the requirements of Title 29 U.S.C.A. §411.

D

The Congress of the United States has preempted the field in the appointment of exclusive bargaining agents pursuant to Title 29 U.S.C.A. §158 and where the constitution of a labor organization requires a local union to join a District Council for all purposes to include naming the District Council as to the exclusive bargaining agent, such provision is null and void and cannot be enforced by the imposition of a trustee by internal organizational procedures.

E

The refusal of a local union, which is the legal bargaining representative, to refuse to bargain for objectives set by the International, does not constitute grounds to appoint a trustee under Title 29 U.S.C.A. §462.

F

The decision of the United States Court of Appeals, Tenth Circuit, should not be left undisturbed and it is imperative this Court correct the errors involved for several reasons, any of which qualify for review by this Court, and when taken together show a definite need for this Court's attention and supervision.

ARGUMENT AND BRIEF OF AUTHORITIES

The questions presented and the reasons for granting the Writ of Certiorari will be grouped and argued under the following four propositions:

PROPOSITION I

THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA SHOULD BE PERMANENTLY ENJOINED FROM ANY FURTHER ATTEMPTS TO IMPOSE A TRUSTEE ON LOCAL 612 OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA FOR ANY OF THE REASONS EXISTING ON AND PRIOR TO MAY 16, 1972, AS SUCH ACTS ARE VIOLATIVE OF TITLE 29 U.S.C.A. §462. THE DECISION OF THE TRIAL COURT IN DENYING THE PERMANENT INJUNCTION SHOULD BE REVERSED.

A. The Imposition of a Trusteeship for the Failure of Local 612 to Fully Comply and Fully Join the Oklahoma District Council Is Violative of Title 29 U.S.C.A. §462.

Petitioners Willie Gordon, et al., and Petitioners C. J. Hines, et al., complain of the imposition of trustee and under the facts in this case assert that the trustee was not imposed for any of the purposes set out in Title 29 U.S.C.A. §462, which provides that a trustee must be for one of the following purposes:

> (1) To correct corruption or financial malpractice;
>
> (2) To assure the performance of collective bargaining agreements or other duties of a bargaining representative; or
>
> (3) To restore democratic procedures or otherwise carry out the legitimate objects of the labor organization.

In substance the trial court concluded (and affirmed by the United States Court of Appeals, Tenth Circuit) the following:

> (1) That the Local had not properly performed its duties as a bargaining representative;

(2) That democratic procedures were not followed within the Local, and

(3) The failure of the Local's officers to abide by internal union rules regarding the manner for advancing and achieving such goals of the International convention constitutes a basis for imposing a trustee under Title 29 U.S.C.A. §462.

We submit these conclusions are clearly erroneous and based upon a misconception of the law.

The rights of individual members of a labor union are protected by Federal Statute. The Labor Relation Management Act was enacted with a view to allowing those members of local unions to conduct local matters with a minimum of outside interference. In short, local affairs are to be governed by local members under democratic processes. With the background of Labor Management Reporting and Disclosure Act of 1959 in mind, it is necessary to consider the purposes for which the trusteeship in this case was imposed. Petitioners Willie Gordon, et al. and C. J. Hines, et al. submit that the evidence confirms their position that the Laborers' International established a trusteeship over Local 612 because it would not affiliate with the District Council and would not bend to the Laborers' International desire that the contracts be negotiated solely by District Council. In *United Brotherhood of Carpenters and Joiners* v. *Brown* (10th 1965), 343 F.2d 872 at 883:

"The result is that the trusteeship was established for the purposes of affiliating Local 201 with the District Council and raising the dues of its membership. In determining whether these are proper purposes under section 302, we must remember that a majority

> of the local membership consistently voted against having anything to do with the District Council and on at least two occasions, by secret ballot, voted against the proposal to raise the monthly dues. We must also remember that the provisions of 29 U.S.C.A. §411 were designed to afford them protection in that respect. Under these circumstances, we have no hesitancy in holding that the purposes for which this trusteeship was imposed do not fall within any of the categories set forth in section 302. Beyond question, they do not come under the category of correcting corruption or financial malpractice *and have nothing whatever to do with collective bargaining.*"

The Laborers' International has made much of the legitimate objects of the International Union to pursue health and welfare plans as suggested by the 1966 convention. It is interesting to note that in 1968, prior to the formation of the District Council, Local 612 entered into a three-year contract with the AGC and that contract did not contain any provisions for health benefits or pension plan. There was no action taken at that time by the International Union to impose a trusteeship on the Local 612 for failure to pursue these plans which suddenly have become foremost in the Union's mind. The Laborers' International has taken the position that once the District Council was formed it was mandatory that Local 612 become a member of the District Council and by virtue of the Constitution the District Council has the exclusive right to bargain for members of Local 612 and to set the terms of any contract. A specific ground for imposing the trustee was Local 612's failure to affiliate with the Oklahoma Laborers' District Council, Article I, Section 2. The International did not take

any action to place Local 612 in trusteeship in 1968, when Local 612 entered into a contract deleting the provisions of health and welfare benefits in that contract. Only after Local 612 refused to join a newly formed Oklahoma District Council and entered into a new contract dated March 13, 1972, did the Laborers' International take action under the trustee provisions of the International's Constitution.

There was a feeble attempt on behalf of the Laborers' International to show that there was possible corruption or financial malpractice involved in this case, but this was quickly recognized by the trial court as a sham. There is also no evidence the acts of the Laborers' International in imposing a trustee was for the purpose to assure the performance of a collective bargaining agreement. There is no evidence that Hines, Hodge and Marzette abdicated their duties for any illegal purpose which would require the imposition of a trustee. The membership of Local 612 elected a bargaining committee to represent the membership in the negotiations with the AGC. There is no evidence the acts of the defendants, Hodge, Hines and Marzette, interfered with any collective bargaining agreements of the Laborers' International or the District Council. We take exception to the court's conclusion that (App. 61), Local 612 was not properly performing their duties as a bargaining representative and also take exception that there was a lack of democratic procedures within the local.

PROPOSITION II

THE CONSTITUTION OF THE LABOR ORGANIZATION IS SUBSERVIENT TO FEDERAL LAW AND WHERE A LABOR ORGANIZATION'S CONSTITUTION REQUIRES A LOCAL UNION JOIN A DISTRICT COUNCIL FOR ALL PURPOSES TO INCLUDE NAMING THE DISTRICT COUNCIL AS THE EXCLUSIVE BARGAINING AGENT FOR THAT LOCAL SUCH UNION CONSTITUTIONAL PROVISION IS IN VIOLATION OF TITLE 29 U.S.C.A. §158 AND CANNOT BE ENFORCED BY THE IMPOSITION OF A TRUSTEE BY INTERNAL ORGANIZATION PROCEDURES.

A. The NLRB Has Exclusive Jurisdiction to Determine a Bargaining Agent and Where Local 612 Has Been Certified and Historically Recognized As a Bargaining Agent for Over Twenty Years the International Union Cannot Force the Local to Change the Bargaining Agent by the Imposition of a Trustee for the Failure to Join the Oklahoma District Council.

The Laborers' International Constitution provides that District Councils may be formed. The District Council in this case was formed upon the Application of seven of the nine locals in the State of Oklahoma. The Laborers' International Constitution provides that once the District Council has been formed, that all local unions must become members of the District Council for all purposes including collective bargaining. There is no constitutional provision to exclude a local from the District Council nor is there any constitutional provision in the Laborers' International Constitution for withdrawal from the District Council. Crucial to the issue in this case is the right of Local 612 as a bargaining unit to bargain collectively with their em-

ployers. Title 29 U.S.C.A. §159 provides collective bargaining units may be established by:

> (1) A voluntary organization of employees joined together to bargain collectively with an employer who voluntarily bargains with the employees through their local union;
>
> (2) Or by certified election conducted by the NLRB recognizing a local union and its members as a collective bargaining unit for a certain employer.

Local 612 was established in 1920 and reincorporated in 1940 and since that time has been the collective bargaining unit recognized and contracting with the AGC in the Oklahoma City area. The first contract entered into between Local 612 with the AGC was on October 25, 1945, and such contracts have continued to the day of the contract effective June 1, 1972.

Local 612 is the recognized collective bargaining representative and has had a contractual relationship with the AGC for over twenty years. The Laborers' International is not a party to any labor contract between Local 612 and the AGC, the International does not participate in the negotiation, does not sign the contract as a signatory and has no obligation under the contract to administer the contract. A basic principle of labor law is the right of union members to vote upon and designate their own exclusive bargaining unit (Title 29 U.S.C.A. §157). The Laborers' International Constitution directly contravenes this basic principle in that the affiliation with the District Council is mandatory for all purposes to include bargaining and

entering into contracts for Local 612. Local 612 is and has been a historical bargaining unit recognized by the employers. Further, Local 612 has consistently maintained that it does not desire to designate the Oklahoma District Council as its exclusive bargaining agent. This is shown by the Minutes of the Local 612 and further shown by their desire to negotiate with the AGC in March of 1972 through a bargaining committee composed of union members, Willie Lee Gordon, Edward Ward and Thurman Cummings.

Local 612 has not relinquished any of its rights as the bargaining unit with the AGC and has steadfastly maintained that the Oklahoma District Council is not the bargaining unit to represent Local 612 with the AGC. The National Labor Relations Board has the jurisdiction to determine the proper bargaining agent for the Local 612 and in the absence of any voluntary designation of a different entity such determination must be made by an election (Title 29 U.S.C.A. §157). The case of *NLRB* v. *SuCrest Corporation* (2nd 1969), 409 F.2d 765, sustains Local 612's rights to chose its bargaining agent. The *SuCrest* case involved representation and a similar International Union constitutional provision was involved in that case as is involved in this action. In *NLRB* v. *SuCrest, supra,* at p. 768:

> "The formation of the Sugar Workers Council of North America, I.L.A. AFL-CIO, was authorized by the International union in 1957. In August 1963, pursuant to the authority bestowed on it by a 1963 amendment to the International's Constitution, the I.L.A. Executive Council adopted a proposal formally incorporating the Council into the I.L.A. structure and requiring all Local Unions representing employees in

the sugar industry to affiliate with the Council. The Council's functions, as enumerated in its constitution, include broad supervisory power to 'secure uniformity of purposes and objects' among the affiliated Local Unions. The Locals must gain advance approval from the Council with respect to every item they propose to present to management in contract negotiations, and the Council is to be a party to all collective bargaining agreements negotiated by the Locals. No strike may be called without the Council's authorization.

"Local 1476 never acted to affiliate with the Sugar Council despite the requirement to this effect in the I.L.A. constitution. At two membership meetings the members of the Local specifically voted not to affiliate with the Council."

(p. 770):

"This order to affiliate, which the membership of Local 1476 twice repudiated by majority vote, can hardly be equated with a §9(a) 'designation * * * by' the membership of the Local. Whatever affiliation there may have been bore no relationship to the desires of the Local's membership, and provides no basis for the Council's claim to §9(a) status."

The Section 9(a) status referred to in the foregoing quotation is the right of the District Council to act as representative of the Local and to bind the local in contract negotiations.

The *Sucrest* case, *supra*, and this case are analogous in the following:

(1) Both International Constitutions make membership in the District Council mandatory for all purposes regardless of any vote by the local members;

(2) The Local in *Sucrest, supra,* and Local 612 involved in this action refused to join the District Council; and

(3) The Local in *Sucrest* and Local 612 never designated the District Council as its bargaining agent with the authority to bind the local by contract.

Regardless of the Laborers' International Constitutional provisions with references to affiliation with the District Council, such provisions cannot deprive the members of Local 612 of their right to designate their own bargaining agent. At the time the contract was entered into which was the subject matter of the lawsuit in the Temporary Emergency Court of Appeals, Case Number 10-2, Local 612 had consistently rejected naming the District Council as its bargaining agent and from taking any definitive action which would constitute a consent to permit the District Council to represent Local 612.

Although the bargaining objective for health, welfare and pension is a commendable objective, such commendable objectives cannot be used to divert the principle that local affairs are to be governed by local members under democratic processes, *Navarro* v. *Gannon* (2nd 1967), 385 F.2d 512:

> "We need not dispute the contention of defendant Gannon that 'it is greatly to the advantage of each and every guard to belong to a Union, which is as large as

possible so that we will have greater bargaining power and greater financial stability.' Union autocracy may indeed be more effective in mobilizing the collective power of workers to gain greater material benefits. But Congress determined that the aims of labor organizations were broader, that the ideals of responsibility and self-determination must be weighed with the goal of economic security, and that union democracy was so important to those ideals that it should be protected as a matter of national policy."

Members of local unions and bargaining units are given the right of law to vote upon their bargaining agent. Local 612 has refused to join the District Council for the reason that Local 612 does not, did not and does not now desire to appoint the Oklahoma District Council as its bargaining representative.

PROPOSITION III

THE INTERNATIONAL UNION BY ITS INTERNATIONAL CONSTITUTION AND EDICT OF ITS INTERNATIONAL PRESIDENT CANNOT CHANGE THE BARGAINING UNIT FROM THAT OF THE LOCAL UNION TO A NEW DISTRICT COUNCIL BY EDICT AND IMPOSITION OF A TRUSTEE TO FORCE SUCH ACTION WITHOUT COMPLYING WITH PROVISIONS OF THE NLRB OR THE ELECTION PROCESSES THEREIN PROVIDED. THE OPINION, IN FACT, ALLOWS THE INTERNATIONAL UNION TO IGNORE COMPLETELY PROVISIONS OF TITLE 28 U.S.C.A. §411 AND UPHOLDS THE ACTION OF THE INTERNATIONAL UNION TO ORDER A LOCAL INTO A DISTRICT COUNCIL REGARDLESS OF THE WISHES OR VOTE OF THE INDIVIDUAL MEMBERS IN A LOCAL UNION. IN OTHER WORDS, IT ALLOWS THE INTERNATIONAL TO COMPLETELY IGNORE THE VOTES OF THE MEMBERS IN THE UNION NOT TO JOIN THE DISTRICT COUNCIL. SUCH BUSINESS WAS BEFORE THIS LOCAL UNION AND PROPERLY DECIDED BY THE MEMBERSHIP TO TAKE A CONTRARY ACTION AND NOT JOIN THE DISTRICT COUNCIL. TO LET THE OPINION OF THE UNITED STATES COURT OF APPEALS, TENTH CIRCUIT, TO STAND IN THIS CASE EMASCULATES TITLE 29 U.S.C.A. §411.

This action was started in 1970 and we contend the International Union by edict ordered this local union to affiliate and become a member of the Oklahoma District Council and to surrender to said District Council its power to negotiate contracts, to handle grievances and to set its dues. Three times the record shows the local union voted against joining this council. This is the identical fact situation passed on in *United Brotherhood of Carpenters and Joiners* v. *Brown* (10th 1965), 243 F.2d 872. In that case

the Court would not allow the International Carpenters Union to force the Wichita local union to remain a member of the Carpenters' District Council, which council also had the power to bargain collectively, discipline members, which are the same things we have involved in this case.

We submit the International cannot force a local union to join a District Council against the vote of the members regardless of the purpose for which a trusteeship is imposed. A trusteeship may be imposed only for the valid reasons set out in Title 29 U.S.C.A. §462. A local union cannot be affiliated with a District Council by a trustee regardless of the validity of the reason if the members have in the past refused to affiliate.

At page 12 of the opinion (App. B) it is stated:

> "Through its constitution the International required that bargaining negotiations be conducted by the District Council. Local 612 flaunted its disregard of these objectives and rules of the International."

This again reflects the erroneous assumption the International unions can establish any kind of rules and in turn impose them on the members of a local union who three times in an open meeting had refused to join the District Council. At pages 16-17 of the opinion (App. B) it is stated:

> "Appellants argue that the purpose of the trusteeship was to substitute district council as the bargaining agent for Local 612 in violation of the NLRB, 29 USCA §151 et seq. The answer is that the NLRB has exclusive jurisdiction to determine the question of representation for the purpose of collective bargaining."

This statement is true, however, this Opinion completely misapplied this statement of the law to the facts in this case. It was not Local 612 that wanted to change the bargaining agent which would have required the local to petition for an election by the NLRB conducted under the Board's rules. This case and the facts are undisputed that it was the International Union that wanted to change the bargaining agent and it is subject to the same rules and law that the local union would be. The International Union should have requested an election by the NLRB and such an election would determine who these members wanted to represent them, the local union or the district council. However, the International Union took the law in its own hands and told them to either join regardless of the law or face trusteeship if they negotiated their own contract which Local 612 had a lawful right to do.

We submit the Court has misapplied the law pronounced in the case of *NLRB* v. *SuCrest Corp.*, 409 F.2d 765. The *SuCrest* case did not hold that the local union had to appeal to the NLRB when it was ordered to change its bargaining agent, but to the contrary *SuCrest* held that the International Union could not force local unions to change its bargaining agent from the local to a district council without the consent of the local unions or by an election properly held by the NLRB. There is no authority in Title 29 U.S.C.A. §462 to impose a trustee for the purpose of affiliating a local with a district council which will in turn negotiate as bargaining agent for the local.

The trial court and the United States Court of Appeals, Tenth Circuit, by its affirmance found the trustee was im-

posed for a valid reason under Title 29 U.S.C.A. §462, however, this Section does not permit the trustee to affiliate Local 612 with the Oklahoma District Council or to appoint the Oklahoma District Council as the bargaining agent for Local 612 and this action we respectfully request should be specifically prohibited.

PROPOSITION IV

THE CONSTITUTION OF THE OKLAHOMA DISTRICT COUNCIL OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA GOVERNING REPRESENTATION ON THE DISTRICT COUNCIL, CONSTITUTES A VIOLATION OF TITLE 29 U.S.C.A. §411 WHICH REQUIRES EQUAL REPRESENTATION IN LABOR ORGANIZATIONS AND IS PROPERLY THE SUBJECT MATTER OF AN ACTION BY THE OFFICERS AND INDIVIDUAL LOCAL UNION MEMBERS UNDER TITLE 29 U.S.C.A. §412.

Labor Management Reporting Act, passed by Congress, Title 29 U.S.C.A. Section 412 provides that any person whose rights secured by provisions of this subchapter have been infringed by any violation of this subchapter, may bring a civil action in the District Court of the United States for such relief as may be appropriate. A decision in this case will require this Court to interpret the meaning of Title 29 U.S.C.A. Section 411 commonly termed the Bill of Rights Section.

The question is whether the weighted voting as set out in Article IV of the Uniform District Council Constitution:

ARTICLE IV

Membership and Representation

Section 1. The members of a District Council shall consist of delegates from affiliated Local Unions, who have been elected pursuant to the provisions dealing with qualifications, nomination and election of officers, as provided for in the Uniform Local Union Constitution, in such number as hereinafter provided.

Section 2. Such delegates shall present their credentials to the District Council not later than the first meeting of the Council following their election.

Section 3. Each Local Union affiliated with the District Council shall be entitled to delegates to said Council in the following manner:

2 delegates for 500 members or less

3 delegates for 501 to 1000 members

4 delegates for 1001 to 2000 members

5 delegates for 2001 to 4000 members

6 delegates for 4001 to 8000 members

7 delegates for 8001 or more members

complies with act.

When this case was first instituted Oklahoma had nine locals and the locals had members as follows:

Muskogee	334
Bartlesville	68
Lawton	140
Ponca City	97
Oklahoma City	659
Stillwater	65
Tulsa	822
Enid	42
Vinita	101

By mathematical calculation, we point out that under the representation provided in Article IV of the Uniform District Council Constitution, that this gives an individual member in Enid ten times the voting strength in the District Council as a member from the Oklahoma City local. A member in the Stillwater local has seven times the voting strength of one member in the Oklahoma City local. Then taking the three larger locals, Muskogee with 334 members, Oklahoma City with 659 members and Tulsa with 822 members, we end up with 1815 members with eight votes in the District Council. Then taking the other six locals in Oklahoma, Bartlesville, Ponca City, Lawton, Stillwater, Enid and Vinita, we have 510 members with twelve votes in the District Council. This gives these six smaller locals a vote that is five times larger than that of the 1815 members in the three larger locals. We contend this is complete denial of equal rights as set out in Section 411 of Title 29.

Section 411 provides as follows:

"(a)(1) Equal rights.—Every member of a *labor organization* shall have *equal rights* and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws." (Emphasis added.)

Then in subsection (3) of Section 411, we find this language:

"(3) Dues, initiation fees, and assessments.—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing being at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal

> office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided,* That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization."

We submit the District Council is a local labor organization.

Section 2, Article II of the Uniform District Council Constitution of the International Union, sets out the powers of the District Council. These powers include the right to negotiate, bargain for and enter into understandings and agreements with employers for and on behalf of its affiliated local unions and enforce and police the contracts and gives the District Council power to establish and regulate the amount of fees and dues, to handle grievances and to handle discipline of individual members of local unions, all of which are connected to and duties of a local labor organization. In performing these functions that we ordinarily comprehend as the functions of a local labor organization, we contend the District Council becomes a labor organization within the meaning of Title 29 U.S.C.A. Section 411. As a labor organization, then the members would have to be the members of the local unions and the Act of Congress in providing equal rights under Section 411 (a) (1), clearly

means and has to mean that the voting strength of a member in Oklahoma City, should equal that of a member in any other local in Oklahoma.

American Federation of Musicians v. *Wittstein*, 379 U.S. 171, a 1964 decision discussed and approved a proportionate voting method which essentially gave the local a voting strength based upon the membership. In *Wittstein* the International Constitution provided that each local would be entitled to one delegate for each 100 members. This Court stated that there was nothing in the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Section 411(a) which prohibited weighted voting in representative bodies. That was the sole question presented and decided by the Court. Syllabus 2 of the *Wittstein* case is as follows:

> "The statute providing that dues of international union shall not be increased except by 'majority vote of the delegates voting at a regular convention' does not prohibit a weighted voting system, authorized by union's constitution, under which delegates cast a number of votes equal to membership of local union from which they are elected."

The evidence showed there that all the delegates at the national convention representing the various locals cast a vote for all the members in that respective local on certain issues. This was clearly a one-man, one-vote situation that was approved by the Supreme Court of the United States on weighted voting. The trial court cited the *Wittstein* case in support of its conclusion to dismiss the Complaint of Willie Gordon. We say this is misconception which resulted in an erroneous conclusion of law.

> "* * * We hold that § 101(a)(3)(B) does not prohibit a weighted-voting system under which delegates cast a number of votes equal to the membership of the local union from which they are elected."

In *Wittstein* the Union members bringing the action were attempting to establish that the "one-man one-vote" concept was applied literally throughout the Union's representative bodies, i.e., "the vote of one delegate at a national convention counted only as one vote regardless of the number of votes the delegate represented. This Court disagreed and in effect held the one-man one-vote concept applied in the Local Union. The legislative history referred to in *Wittstein* led the Court to the conclusion:

> "The pervading premise of both these titles is that there should be full and active participation by the rank and file in the affairs of the union. We think our decision today that the vote of an elected delegate may reflect the size of his constituency is wholly consistent with that purpose."

The phrase "equal rights" in the "Bill of Rights" part of the Labor Management Reporting and Disclosure Act is certainly semantically kin to the phrase "equal protection" in the Fourteenth Amendment. While the rights of a member of a labor union are essentially under statutory rather than constitutional protection, their importance is certainly great. As a practical matter, having an effective say-so in the government of one's livelihood is important and this is particularly true where, as in this case, an employee is compelled to be a member of a union in order to earn his livelihood.

We would suggest the rationale of the decisions in *Baker* v. *Carr*, 369 U.S. 186, and *Reynolds* v. *Sims*, 377 U.S. 533, is applicable on the meaning of equal protection. The whole movement of the law, both legislatively and judicially, is toward expansion of the concept of democracy.

In *Sertic* v. *Cuyugo, Lake, and Ashtabula Counties Carpenters District Council of the United Brotherhood of Carpenters and Joiners* (6th 1970), 423 F.2d 515, the plaintiff contested the validity of a referendum authorizing a district council to negotiate with employers for an increase in wage and other compensation and also providing for a wage assessment. The Court stated that Congress in enacting the Labor Management Reporting and Disclosure Act intended to restore to members of a labor union the right to participate freely in the government of the union. Union members are entitled under the Act to meaningful vote on increase of assessments. Certainly where we have the facts which we have here, where the Oklahoma District Council gives the Oklahoma City Local 612 a vote of only one-fifth of that of the members of five other locals to allow this District Council to negotiate a contract and set dues, is clearly a denial of the right of these members of a meaningful vote on these increases.

The assumption by the lower courts in this case that an International Union may require all local union members to bargain for health, welfare and pension fund and that the local union members have no right to object is no longer a part of labor law. The federal government has preempted the field of labor relations and Congress has given local unions the power to become bargaining agents, to

represent all workers in a unit and for these workers to have a voice in their local union affairs. In 1959 Congress enacted legislation to curb the power of international unions by passing the Labor-Management Reporting and Disclosure Act, commonly termed as the Landrum-Griffin Act and cited in this Petition as Title 29 U.S.C.A. §401, *et seq.* This action was initially brought under the provisions of Title 29 U.S.C.A. §412 for violations of rights guaranteed by Title 29 U.S.C.A. §411. The purpose of this Act was to give individuals in local unions rights, some of which are: equal rights to attend meetings, equal rights to vote on officers and pass on the business of the meetings, and in general equal rights to determine affairs of their local union.

Section 2, Article II of the Uniform District Council Constitution of the Laborers' International Union, sets out the powers of the District Council. These powers include the right to negotiate, bargain for and enter into understandings and agreements with employers for and on behalf of its affiliated local unions and enforce and police the contracts and gives the District Council power to establish and regulate the amount of fees and dues to handle grievances and to handle discipline of individual members of local unions, all of which are connected to and duties of a local labor organization. In performing these functions that we ordinarily comprehend as the functions of a local labor organization, we contend it becomes the functional equivalent of a labor organization within the meaning of Title 29 U.S.C.A. §411. As a labor organization, then the members would have to be the members of the local unions and the Act of Congress in providing equal rights under Section

411(a)(1), clearly means and has to mean that the voting strength of a member in Oklahoma City should equal that of a member in any other local in Oklahoma. This can be accomplished by a true proportionate representation on the District Council or by a weighted voting system.

When the intermediate body, in this case the Oklahoma District Council, completely takes over the functions of the local union then the one-man one-vote rule must be applied in some form. We submit the Oklahoma District Council is the functional equivalent of a local union and therefore a functional test must be applied in determining the legality of its method of representation. This Act was intended to give local unions and local members of unions some right to join or not to join a District Council and to govern their affairs. If the intermediate body (Oklahoma District Council) has the functional duties of a local union it loses its status as an intermediate body and is governed by the same rules as to equal individual rights as a local labor organization.

CONCLUSION

For the foregoing reasons, petitioners respectfully submit the Petition for a Writ of Certiorari to the United States Court of Appeals, Tenth Circuit, should be granted.

Respectfully submitted,

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May, 1974

APPENDIX A

FILED
NOV 1 1972
REX B. HAWKS
Clerk, U. S. District Court
By S. J. BAILEY
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

WILLIE LEE GORDON, LEON VINCENT, FRANK E. SCOBEY, HERMAN WILEY and HARRISON TAFT, Plaintiffs, vs. LABORERS' INTERNATIONAL UNION OF NORTH AMERICA; OKLAHOMA LABORERS' DISTRICT COUNCIL; LOCAL 612 OF LABORERS' INTERNATIONAL UNION OF NORTH AMERICA; MARCELUS HODGE, J. S. HENDERSON, C. J. HINES, Defendants.	No. 70-520 Civ.

CONSOLIDATED CASES

[APPENDIX]

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., OKLAHOMA CHAPTER-BUILDERS DIVISION,

Plaintiff,

vs.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 612,

Defendant,

and

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA,

Intervenor.

No. 72-544 Civ.

CASE NO. 70-520 CIV.: Charles W. Schwoerke, Oklahoma City, Oklahoma, attorney for plaintiffs; Maynard I. Ungerman, Tulsa, Oklahoma, Robert J. Connerton and Jules Bernstein, Washington, D. C., attorneys for defendants, Laborers' International Union of North America and Oklahoma Laborers' District Council; Leslie L. Conner of Conner, Little & Conner, Oklahoma City, Oklahoma, attorney for defendants, Local 612 of Laborers' International Union of North America and officers of Local 612, and as Cross-Complainant against Laborers' International Union of North America.

CASE NO. 72-544 CIV.: Edward E. Soule, of Lytle, Soule & Emery, Oklahoma City, Oklahoma, attorney for plaintiff; Charles W. Schwoerke, Oklahoma City, Oklahoma, attorney for defendant, Laborers' International Union of

North America, Local 612; Maynard I. Ungerman, Tulsa, Oklahoma, Robert J. Connerton and Jules Bernstein, Washington, D. C., attorneys for Laborers' International Union of North America, intervenor.

OPINION

Before LUTHER BOHANON, United States District Judge

These two civil actions were consolidated for final trial and disposition. No. 70-520 Civ. was instituted on October 20, 1970, by five members of Local 612, Laborers' International Union of North America, AFL-CIO, against the Local 612, the Oklahoma Laborers' District Council, and the Laborers' International Union of North America and certain named officers of Local 612.

The parties in these two consolidated cases will be referred to hereinafter as follows: Local 612, Laborers' International Union of North America as the "Local" or "Local 612"; Oklahoma Laborers' District Council as "Council"; Laborers' International Union of North America as "International"; Oklahoma Chapter-Builders Division of the Associated General Contractors of America, Inc. as "Chapter".

Plaintiffs in No. 70-520 Civ. sought an order authorizing the Local to withdraw as a member of the Council and to restore its rights as they existed prior to November 16, 1968, or alternatively, that the Local receive additional delegates to the Council so that it would be represented in direct proportion to its membership.

On May 4, 1972, the Court granted plaintiffs' motion for leave to amend their complaint. In the amendment plaintiffs alleged that on April 25, 1972, International had improperly imposed a trusteeship upon the Local in violation of Section 302 of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §462. Thereafter on May 8, 1972, after a hearing, the Court entered a preliminary injunction enjoining such trusteeship pending the conduct of a trial on the merits.

[APPENDIX]

In civil action No. 72-544 commenced on August 8, 1972, by the Chapter against the Local, the Chapter sought a declaration under Section 301 of the Labor-Management Relations Act of 1947, 29 U.S.C. §185, and the Declaratory Judgments Act, 28 U.S.C. §2201, seeking a declaration of validity of a collective bargaining agreement entered into on March 13, 1972, between the Chapter and the Local. At the time the Chapter's lawsuit was filed, the first action had been processed, but not to a final conclusion.

International, on August 23, 1972, moved to intervene in the Chapter's suit (Civil No. 72-544) and to consolidate the two actions.

The Court found that the two cases arose out of a common set of facts and that they raised common questions of law and, therefore, on September 27, 1972, entered an Order consolidating and merging the causes for all purposes including trial and disposition.

A trial was conducted on September 29, 1972, at the conclusion of which the Court suggested the parties submit briefs, and the Court, having considered the briefs and the evidence submitted, as well as all exhibits, finds as follows:

1. International is a labor union consisting of approximately 600,000 members throughout the United States and Canada, and was organized in 1903. Since its organization, International has been governed by a written constitution, (Def. Ex. 2).* From the date of its organization, International has consisted of affiliated Locals and Councils. Councils are intermediate bodies made up of delegates representing Locals in accordance with the provisions of a Uniform District Council Constitution, which provides as follows with respect to representation of Local Unions:

---

* References to Exhibits introduced by the International are designated as "Pl. Ex. ....."

Section 4. The representation of Locals affiliated with this Council shall be as follows: Two delegates for 500 members or less; three delegates for 501 to 1,000 members; four delegates for 1,001 to 2,000 members; five delegates for 2,001 to 4,000 members; six delegates for 4,001 to 8,000 members; seven delegates for 8,001 or more members.

Article XIX of the International's Constitution provides in part as follows:

District Councils

Section 1. The General Executive Board, or the General President and General Secretary-Treasurer, shall authorize the issuance of District Council charters in such areas as, in their judgment, the best interests of the International Union, Local Unions and members thereof, demand.

Section 2. Such charters may be issued:

(a) Upon application of a number of affiliated Local Unions in an area when it is deemed advantageous and beneficial to said Local Unions to combine their economic power, effort and strength into a unit which would tend to enhance, promote and conserve their welfare and interest and that of their members; or

(b) When the General Executive Board, or the General President and General Secretary-Treasurer, upon examination of conditions as they may exist in a given area, believe that the welfare and interest of a group of Local Unions and their members would be enhanced, promoted and conserved by the issuance of a District Council charter.

Section 3. When a District Council charter is issued, all Local Unions within its territorial and/or craft jurisdiction shall affiliate and remain affiliated with said District Council.

2. On October 7, 1968, an application was filed with the International by seven (7) of its nine (9) Locals in Oklahoma requesting the issuance of a Council charter and the establishment of an Oklahoma Council, (Def. Ex. 13). On October 9, 1969, a Council charter was issued by International establishing the Oklahoma Laborers' District Council having territorial jurisdiction over the entire State of Oklahoma.

Pursuant to the provisions of Article II, Section 2 of the Uniform District Council Constitution, a Council has power to

> . . . negotiate, bargain for and enter into undertakings and agreements with employers, for and in behalf of its affiliated Local Unions and to enforce and police the observance thereof by employees and employers, Local Unions and their members and when, after due deliberation, it believes and deems it necessary, to take such proper and lawful economic action as may be required to accomplish and effectuate the welfare of its affiliated Local Unions and members.

3. For some years in the past, each Local in Oklahoma affiliated with the International engaged in collective bargaining on behalf of its members without any particular regard to the impact of such bargaining upon other Locals within Oklahoma and without any coordination among such Locals regarding wages, fringe benefits, and other terms and conditions of employment.

At the 1966 Convention of International, delegates from affiliated Locals and Councils throughout the United States and Canada adopted Uniform collective bargaining goals for all affiliates and the entire membership of International. These included provisions for health and welfare, pension and training coverage under collective bargaining agreements.

4. It was in order to achieve these and other goals within Oklahoma that the Oklahoma Council was established in 1969. Local 612 originally opposed the establishment of the Council. However, delegates of Local 612 have participated in virtually all Council meetings since its establishment.

From the time of its creation, at each Council meeting steps to implement an overall statewide collective bargaining program were discussed and outlined. Under the program the Council was to negotiate a contract on behalf of each Local which would effectuate the Council's bargaining goals. The contract was to contain health and welfare, pension and training program coverage for members of all Locals within the Council. Delegates from Local 612 were present at all of the meetings of the Council at which these bargaining proposals and plans were discussed and prepared (Def. Ex. 5).

5. The Council's program to establish statewide conditions of employment including health and welfare, pension and training coverage proved successful in all respects except insofar as Local 612 was concerned. The eight other Locals within the state have all negotiated collective bargaining agreements through the Council containing such coverage and in addition all Local Union agreements now include a common expiration date of June 1, 1973.

6. Although the principal officers of Local 612 were aware of the Convention mandates for health and welfare, pension and training coverage, participated in Council meetings and were aware of the Council's constitutional authority to negotiate for and on behalf of all affiliated Locals, none of the officers of Local 612 took the necessary steps to negotiate by and through the Council.

Instead, in late 1971 the officers of Local 612 receded entirely from the scene and allowed negotiations with the Chapter to proceed through a group of members who were

elected pursuant to a resolution which the officers conceded to be improper. Although the officers had full knowledge that some members of the Local were negotiating with the Chapter in direct contravention of provisions of the Union's Constitution, they failed to notify the Council of the actions of the unauthorized negotiating committee, nor did they take any steps to prevent the purported negotiations from continuing.

7. As heretofore found and as shown by the pleadings, Chapter means and includes the Associated General Contractors of America, Inc., Oklahoma Chapter-Builders Division, which includes all nine District Councils of International in Oklahoma, Mrs. Ruth Ann Leslie, at all times herein concerned, was manager of the Chapter, and on February 7, 1972, Mr. Jack J. Ridenour, Secretary-Treasurer of the Council, wrote Mrs. Leslie, as Manager of the Chapter, to advise that the bargaining committee of the Council was prepared to meet with the Chapter's negotiating committee regarding the negotiation of certain collective bargaining agreements covering Laborers' Locals in Oklahoma, including Local 612, (Def. Ex. 19). This was notice to the Chapter that the Council was the bargaining agent for Local 612. Notwithstanding this notice received from Mr. Ridenour, the Chapter in disregard thereof proceeded to enter into a collective bargaining agreement with the Local 612 bargaining committee on March 13, 1972.

8. Since March 29, 1971, under the provisions of the Economic Stabilization Act, as originally enacted, 84 Stat. 799, and as amended, 85 Stat. 743, and accompanying executive orders and administrative regulations, collective bargaining agreements negotiated by employers and unions in the construction industry have been required to be submitted for approval to so-called "craft boards" set up by the national construction industry and national craft unions before such contracts could be implemented. Such craft boards have been authorized to approve or disapprove pro-

posed contracts on the basis of guidelines set down by a higher level tripartite board known as the Construction Industry Stabilization Committee ("CISC" hereinafter). (Pl. Exs. 26-30).*

9. Pursuant to Executive Order 11588, established to implement the stabilization program in the construction industry, a Laborers' National Craft Board ("Craft Board" hereinafter), was established consisting of an equal number of representatives of the International and of employer groups, including the Associated General Contractors of America, which is the parent group of the Chapter.

10. In accordance with the foregoing regulatory scheme, on March 13, 1972, a communication was sent to the Craft Board by the Chapter and Local 612, submitting the contract as negotiated by them for the Board approval. (Pl. Ex. 20).

11. On March 20, 1972, Peter Fosco, General President of International, received a letter from R. P. Vinall, Manager of International's regional office which has responsibility for the States of Oklahoma, Texas, and New Mexico. In his letter, Vinall advised General President Fosco of the foregoing developments and he recommended that the Local Union be placed under trusteeship, (Def. Ex. 5).

On March 27, 1972, the International's General Secretary-Treasurer sent a notice to the officers and members of Local 612 regarding the conduct of a hearing to determine whether Local 612 should be placed in Trusteeship. The notice of hearing specifically enumerated the grounds upon which the General President proposed to rely upon in support of the imposition of trusteeship: the fact that the purported agreement negotiated between Local 612 and the Chapter covered a three-year term ending June 1, 1975; that the purported agreement failed to contain any pro-

* References to Exhibits introduced by the Chapter have been designated as "Pl. Ex. ....."

vision for health, welfare or training, contrary to the policies and programs developed and adopted by the Council; that the execution of the purported agreement has impeded and delayed coordination of collective bargaining and the restructuring of statewide bargaining in Oklahoma to the detriment of other Laborers' Locals in the State; that the agreement reached incorporated a wage settlement which jeopardized the settlements of other Laborers' Locals as well as the settlements of other crafts; and that the foregoing conduct violated various provisions of the International, Council and Uniform Local Union Constitutions. The Local received notice of the hearing, and three of its officers were present and participated at the April 10 hearing, (Def. Ex. 1).

At the conclusion of the hearing, the International's Hearings Panel reviewed the transcript and exhibits and prepared a report consisting of findings of fact and a recommendation that Local 612 be placed under the supervision and trusteeship of the International. That report was submitted to the General Executive Board of the International at its April 20, 1972, meeting, and the Board unanimously voted to adopt the Hearings Panel's recommendation, (Def. Ex. 5).

Immediately after the Board's decision, the General Secretary-Treasurer of International prepared and sent a notice to the Local containing the Hearings Panel's report and recommendation and the decision of the General Executive Board thereon, (Def. Ex. 5). At the same time, the General President sent a letter to the officers and members of Local 612 notifying them of the General Executive Board's decision and indicating that he was exercising his authority under Article IX, Section 7 of the International Constitution, by placing the Local under trusteeship, (Def. Ex. 5).

12. By letter dated June 29, 1972, from V. W. Reed, Labor Co-Chairman and Paul B. Richards, Management Co-Chairman of the Craft Board, the Chapter was advised that the Board was rejecting the proposed agreement, (Def. Ex. 17). In so doing, the Board declared in part as follows:

> The proposed agreement failed to meet the Craft Board criteria for Oklahoma on the following counts. First, the agreement covers a three-year period and would stand as an absolute bar to necessary restructuring. Second, the Agreement fails to narrow the economic gap between Tulsa and Oklahoma City and indeed, widens the margin. Third, we have reservations concerning the fact that no provisions have been made for welfare and pension benefits, even though the rest of Oklahoma is covered by agreements calling for these benefits negotiated by the Oklahoma Laborers' District Council and the Oklahoma Chapter, AGC.

In addition, the Board advised the Chapter that it was referring the entire file in the case to the CISC "for such action—if any—as it may wish to take."

13. By letter dated July 13, 1972, John T. Dunlop, Chairman of the CISC advised the Craft Board as follows regarding the proposed contract between the Chapter and Local 612:

> Gentlemen:
>
> The Construction Industry Stabilization Committee at its meeting of July 13 reviewed the letter of June 29, 1972 from the Craft Board to the Oklahoma Builders Chapter, AGC, Mrs. Ruth Ann Leslie, Manager, and the attached file. The Committee reviewed also the series of cases involving the Laborers and other basic crafts which it has handled or has pending in the State of Oklahoma, and, in connection with these cases, has reviewed the wage and fringe benefit data it has com-

piled for all of the crafts in major Oklahoma localities, in particular, Tulsa, Oklahoma City, Lawton, Bartlesville, Muskogee, McAlester, Ponca City, Norman and Clinton.

Executive Order 11588, which established the Construction Industry Stabilization Committee and authorized the establishment of craft boards, particularly charged the Committee with the stabilization of wages consistent with and in furtherance of effective collective bargaining in the construction industry. The criteria of the Committee issued on January 28, 1972 in agreement with the Pay Board. Specifically provide that the Committee, may give special consideration "to agreements which provide for significant changes in the geographical structure of bargaining, including the development of wage zones under one agreement, where such changes would promote the stabilization of collective bargaining and the effective utilization of manpower and management resources." There is little doubt that to a significant degree inflation in the construction industry from 1966 through 1971 was substantially enhanced by a geographical structure of bargaining which has become archaic in many localities and areas, which inhibits the flow of manpower, management resources and equipment from one locality to another and which removes the strike and lockout as effective methods of resolving disputes, since contractors and men move so readily with improved transportation from one city to another.

In a number of states the national unions and the national employer associations, working through craft boards, have negotiated or assisted in the negotiation of agreements with substantially broader geographical coverage, in order to remedy the defects of the older geographical structure of bargaining mentioned in the previous paragraph. The Construction Industry Sta-

bilization Committee is strongly of the view that these broader agreements have not only contributed to short-run wage stabilization but constitute a significant contribution to the long-run health of the construction industry in the national interest. It may also be useful to point out that under the substantive policies of the CISC, issued jointly with the Pay Board on January 28, 1972, "no agreement is automatically entitled to the general pay standards, or the exceptions thereto, of the Pay Board." One of the reasons for this policy is that in the process of restructuring bargaining in broader geographical districts it may be important over a period of one or two years to provide for larger increases in some communities than in others to bring rates into equality or to provide for reasonable wage zones for each sub-unit of territory.

The Committee, on examining the file submitted to it by the Laborers Craft Board in this matter and reviewing the full range of data and cases in Oklahoma, concludes that the Laborers Craft Board acted appropriately in its refusal to approve the agreement submitted by Laborers Local Union 612 of Oklahoma City and the Oklahoma Chapter—Builders Division, Associated General Contractors of America, Inc. The Construction Industry Stabilization Committee unanimously requests that the Oklahoma Chapter—Builders Division, AGC of America, meet with the Laborers District Council, of which Local Union 612 is a part, to review the agreement which was rejected by the Craft Board to take into account the objections to the agreement pointed out by the Craft Board in its letter of June 29 to Mrs. Ruth Ann Leslie and to seek to negotiate towards a more coherent wage rate structure for Laborers in Oklahoma. Of course, any renegotiated agreement would have to be submitted through the

Craft Board to the Construction Industry Stabilization Committee for approval. (Def. Ex. 18).

14. At the direction of the Court, a duly noticed meeting of Local 612 was conducted on August 21, 1972, supervised by Charles R. Jones, Magistrate, Western District of Oklahoma, at which the members were polled by secret ballot with regard to the following question:

> Do you want the Laborers' District Council to negotiate the Laborers' contract for the Oklahoma City area in accordance with the Laborers' International Union Constitution?

The vote was conducted after a statement of views by both sides. The result of the vote was 157 voting yes; 45 voting no; void ballots, one.

15. By letter dated August 31, 1972, Edward E. Soulé, counsel for the Chapter, advised the CISC and Judge George H. Boldt, Chairman of the Pay Board established under Executive Orders 11627 and 11640, that it was the position of the Chapter that the decision of the Craft Board was illegal and that, unless it was reversed, the Chapter would seek judicial relief, (Pl. Ex. 22). By letter dated September 15, 1972, from Gilmore S. Wheeler, Director, Operations Control of the Pay Board, Mr. Soulé was advised that the subject of his letter fell within the jurisdiction of the CISC and that future communications regarding the matter should be addressed directly to it, (Pl. Ex. 23).

16. All of the parties were fully aware that there could not be a binding contract between Local 612 and Chapter unless the same was submitted to and approved by the Craft Board. This is evidenced by the fact, as shown by all of the evidence, that the alleged contract of March 13, 1972, between Chapter and Local 612 was jointly submitted to the Laborers' National Craft Board in Washington for approval. (Tr. 16-17). This fact is further evidenced by the testimony of Mr. W. H. Henry, a member of the Chapter's

negotiating committee in 1972, who testified at the September 29, 1972, hearing that it was understood by the parties not to be a valid contract, but the same was subject to the Craft Board's approval and the Craft Board did not approve it, (Tr. 22-23). Furthermore, Mr. Henry testified that the alleged contract had not been put into effect. (Tr. 23).

From the findings above the Court concludes as follows:

1. The amended complaint filed by several members of Local 612, as well as a cross-complaint against International filed by the defendant officers of the Local, allege a violation of Section 302 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §462, which declares as follows:

> Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

The foregoing provision is a part of Title III of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §401 *et seq.*, which was enacted by Congress to regulate the imposition and administration of trusteeships by parent national and international unions over their subordinate affiliates and locals.

The court concludes that the decision of the International to impose trusteeship upon Local 612 was well within the permissible purposes of Section 302 of the Act in that the trusteeship clearly seeks to assure that the Council and

the Local will hereafter properly perform their duties as bargaining representatives and that democratic procedures will be restored within the Local.

Further, the establishment of coordinated bargaining and the development of health and welfare, pension and training programs as bargaining goals, are common and legitimate union objects. And the blatant and deliberate failure of the Local's officers to abide by internal union rules regarding the manner and means for advancing and achieving such goals constitutes a permissible basis for imposing trusteeship both under the Act as well as under the International's Constitution.

With regard to the question of allowable purposes under Title III, in addition to the express provisions of Section 302 Senate Report No. 187 on S. 1555 notes:

> Section 202 (section 302 as presently enacted) of the bill sets up two standards for testing the legality of a trusteeship. First, the trusteeship must conform to the constitution and bylaws of the labor organization. Second, the trusteeship must be imposed for one of the three following purposes—
>
> > correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.
>
> The bill does not specify in detail all of the reasons for which a trusteeship may be imposed. For instance, the elimination of Communist or other forms of subversion has long been recognized by the courts as a justification for imposing a trusteeship. More rigid standards than these might prevent international intervention when fully justified.

The aforementioned reflection of legislative intent, when focused upon the previously recited facts giving rise to the General Executive Board's decision to impose trusteeship, clearly indicates that the decision to impose trusteeship was not only founded upon statutory grounds, but also constituted the Board's honest judgment, based upon the facts revealed, that the imposition of trusteeship was necessary.

2. The other claim advanced by the Local's officers and several of its members appears to be that under the "equal rights" provision of Section 101(a)(1) of the Act, 29 U.S.C. §411, Local 612 could not be compelled to join the Council since it would not receive proportional representation with regard to its delegate strength within the Council.

The foregoing claim has been disposed of by the Supreme Court's decision in *American Federation of Musicians* v. *Wittstein*, 379 U.S. 171 (1964). In *Wittstein*, it was contended that an increase in union dues enacted at a convention of an international union violated Section 101(a)(3)(B) of the Act, 29 U.S.C. §411. But the Court held that a weighted voting system pursuant to which delegates cast a number of votes equivalent to the membership of the local union from which they were elected was as consistent with Section 101(a)(3)(B) as was a system in which each delegate cast one vote regardless of the number of local union members represented. In so holding, the Court declared as follows:

> . . . Section 101(a)(3)(B) is a part of Title I, entitled the 'Bill of Rights of Members of Labor Organizations.' This Title guarantees to every member of a labor organization equal rights and privileges to vote, to attend meetings, and to participate in the deliberations and business of such meetings. Section 101(a)(3)(B) forms a part of this framework by requiring participation by all members, either directly or through their

elected representatives, on certain union matters thought to be of special importance. *We find nothing to indicate that Congress thought this objective would be better fulfilled by allowing a delegate to cast one vote, regardless of the size of his constituency, than by permitting him to cast a vote equal to the number of members he represents* . . . Section 101(a)(3)(B), as well as Title IV, authorizes a representative system of government and does not require a town meeting for action by an international or national union. (Emphasis added.) (379 U.S. at 181, 182.)

Further, the Labor Department which administers numerous provisions of the Act has ruled that proportionate or weighted voting is not required under the Act:

> There is no indication that Congress intended, in enacting Title IV of the Act (dealing with union elections), to require representation in delegate bodies of labor organizations to reflect the proportionate number of members in each subordinate labor organization represented in such bodies. Questions of such proportionate representation are determined in accordance with the labor organization's constitution and bylaws insofar as they are not inconsistent with the election provisions of the Act. Congress did not attempt to specify the organizational structure or the system of representation which unions must adopt.[1]

Thus, not only is there nothing to indicate that Congress intended to impose a system of voting or representation on unions which would undermine their long-established traditions of representative trade union government. In fact, the court concludes that it was the intent of Congress to leave intact such well-established union practices and procedures.

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[1] United States Department of Labor, Technical Assistance Aid No. 5, *Electing Union Officers* (rev. June 1963).

As the Fourth Circuit declared in *Parks* v. *IBEW, Local 28,* 314 F.2d 886 (4th Cir. 1963), cert. den., 372 U.S. 976 (1963):

> Although state courts have traditionally exercised some supervisory function over local-international relations, and the federal courts are now empowered to intervene in some areas under a number of provisions of the LMRDA, federal judges may not, on their own, cure whatever deficiencies they may think exist in the pattern the parties have fashioned. (Fn. omitted.) (314 F.2d 886, 908.)

Plaintiffs seek an order herein which would require the Court to re-write provisions of the Uniform District Council Constitution which have been in existence for approximately sixty-six years. But as was declared by the United States District Court for the Northern District of Alabama in *Ragland* v. *United Mine Workers,* 188 F.Supp. 131, 133 (1960):

> This court is of the . . . opinion that the 'equal rights' provision of the Act was not intended by Congress to change the International organizational structure of unions. . . .

3. The individual plaintiffs also appear to challenge the authority of Council under Article II, Section 2(a) of the Uniform District Council Constitution to

> . . . negotiate, bargain for and enter into understandings and agreements with employers, for and in behalf of its affiliated Local Unions and to enforce and police the observance thereof by employees and employers, Local Unions and their members and when, after due deliberation, it believes and deems it necessary to take such proper and lawful economic action as may be required to accomplish and effectuate the welfare of its affiliated Local Unions and members.

That Congress was not concerned in the enactment of the Act with what the relationship between local unions, intermediate bodies and a parent national or international union would be, particularly with respect to collective bargaining matters, was confirmed in *Parks* v. *IBEW, Local 28, supra.* In *Parks* the Fourth Circuit held that a parent union was fully within its rights in dissolving an affiliated local union and chartering another in its place on the ground that the dissolved local had refused to abide by a decision and order of the President of the International Union concerning the negotiation of collective bargaining agreements which did not contain certain provisions required by the parent union. The court declared with respect to issues similar to those presented herein:

> What has been granted the parent body as its proper province in collective bargaining and what has been retained by the local—perhaps it is more accurate to put it the other way: what has been retained by the parent and what has been granted to the subordinate—is a matter of internal government resting upon the contract the local and its members have made in accepting a charter from the parent. This court is advertent to the prevailing policy favoring internal union democracy and, of course, it recognizes that in appropriate cases courts may intervene to redress grievances arising from the imposition of discipline upon locals or individual members; but, in the absence of specific legislation, it does not lie within the authority of a court to give effect to its general preferences between international power and local autonomy in matters of collective bargaining. Questions as to how relations between an international and its local might best be regulated are for internal settlement or for Congress, which possesses the legislative power. Judges lack that power even when they are convinced of the desirability of improvements in the law. (Footnotes omitted.) (*Parks* v. *IBEW, supra* at 906.)

See also *Ranes v. Office Employees, Local 28*, 317 F.2d 915 (7th Cir. 1963); *Dunne* v. *Hoffa*, 50 LRRM 2845 (N.Y. Sup.Ct. 1962).

Under the provisions of Article II, Section 2(a) of the Council Constitution, the International properly decided that the negotiation and implementation of collective bargaining agreements on an area-wide basis through the vehicle of a Council constitutes a desirable objective for the purpose of obtaining uniform standards and conditions of employment for its members.

4. Insofar as the suit filed by the Chapter (72-544 Civ.) is concerned, it was instituted pursuant to Section 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. §185, which authorizes the federal district courts to entertain "[s]uits for violation of contracts between an employer and a labor organization . . . without respect to the amount in controversy or without regard to the citizenship of the parties." It is well established that suits may be filed under this provision for a declaration of rights under a collective bargaining agreement even in the absence of allegations of express contractual violations. See, e.g., *Black Clawson Co.* v. *International Association of Machinists*, 313 F.2d 179, 181-2 (2nd Cir. 1962). Accordingly, the court concludes that it has jurisdiction over the Chapter's declaratory judgment action.

With regard to the substantive law applicable to such suits, in *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 456-7 (1957), the Supreme Court has declared

> . . . that the substantive law to apply in suits under §301(a) is federal law which the courts must fashion from the policy of our national labor laws. . . . The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other prob-

lems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. . . .

It is clear that in the instant case the task of fashioning the applicable "common law of labor contracts," see *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 579 (1960), must be undertaken in contemplation of the imposition of comprehensive economic controls over the economy by the Federal government. See *Amalgamated Meat Cutters* v. *Connally*, 337 F.Supp. 737, 763 (1971).

Under Section 3(a) of Executive Order 11588 (Pl. Ex. 26), issued by President Nixon on March 29, 1971, to stabilize wages in the construction industry, the Craft Board was required and has authority to examine "every collective bargaining agreement negotiated on or after the date of this order and . . . determine, in accordance with the criteria established in Section 6 whether wage and salary increases in the agreement were acceptable and may thus be approved." Further, Section 4(c) of the Order declares that "[u]nless and until an increase in wage or salary has been approved in accordance with the provisions of Section 3(a) and 4 of this order, it shall be a violation of this order to put such wage or salary increase into effect."

And Section 7 of the Order declares that "[t]he parties to a labor contract negotiated in the construction industry shall promptly submit that contract to the appropriate board . . ."

At the time the alleged contract was signed, the parties were aware that the contract was subject to review by the Laborers National Craft Board. Indeed, it was submitted to the board for review by the Chapter and Local 612 in accordance with the Order. (Pl. Ex. 20).

Accordingly, the court concludes that the contract was entered into by the parties subject to the condition subsequent that it be approved by the Craft Board and/or the CISC and that, by reason of their refusal to approve the agreement, it was rendered void and of no force and effect.

The Chapter appears to suggest that this court should ignore the action of the Craft Board and CISC with respect to this contract on the ground that those agencies acted in excess of their powers. However, the court concludes that such action was wholly consistent with the authority of these agencies under the relevant legislation and regulations.

The Court further concludes, contrary to the contention of the Chapter, that in examining and reviewing proposed collective bargaining settlements, both the Craft Board and the CISC are authorized to disapprove agreements and make recommendations with regard to bargaining subjects which go well beyond the limited area of wages. Hence Section 11(b) of Executive Order 11588 declares that "[t]he term 'wage or salary' shall mean, for the purpose of this order, all wage or salary rate schedules and *economic benefits* established pursuant to a collective bargaining agreement in the construction industry." (Emphasis added). To adopt the notion advanced by the Chapter that the agencies are limited solely to reviewing the wage provisions of collective bargaining agreements would require the court to close its eyes to the express provisions of the control legislation and implementing orders as well as to the realities of collective bargaining in the construction industry. Hence, if the powers of these agencies were to be read narrowly, parties to collective bargaining agreements might avoid the strictures of the controls by merely concentrating on obtaining benefits outside the narrow ambit of hourly wages. But such was clearly not the intent of Executive Order 11588 nor of the other related governing regulations which sought to empower these agencies to im-

pose effective controls upon collective bargaining in the construction industry. Indeed, in the instant case, the agencies indicated their concern regarding such bargaining subjects as fringe benefits, contract duration as well as the impact of the settlement on employment in surrounding geographical areas.

An appropriate judgment will be entered.

Dated this 1st day of November, 1972.

s/ Luther Bohanon

UNITED STATES DISTRICT JUDGE

APPENDIX B

PUBLISH NOV. 21, 1973

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

NOVEMBER TERM, 1973

WILLIE LEE GORDON, et al.,	)	
	)	
Plaintiffs-Appellants,	)	
v.	)	
	)	
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, et al.,	)	
	)	
Defendants-Appellees,	)	
	)	Consolidated
MARCELUS HODGE, et al.,	)	Appeals Nos.
	)	73-1111 & 73-1112
Defendants-Appellants.	)	
	)	
(D. C. No. 70-520)	)	
	)	
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., OKLAHOMA CHAPTER—BUILDERS DIVISION,	)	
	)	
Plaintiff,	)	
v.	)	
	)	

[APPENDIX]

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 612,
Defendant,

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA,
Intervenor-Appellee.

(D.C. No. 72-544)

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

C. W. Schwoerke for Plaintiffs-Appellants Willie Lee Gordon, et al.

James M. Little (Leslie L. Conner and Leslie L. Conner, Jr., on the brief) for Defendants-Appellants Marcelus Hodge, et al.

Jules Bernstein for Defendant-Appellee Laborer's International Union of North America.

Before BREITENSTEIN and DOYLE, Circuit Judges, and TALBOT SMITH,* District Judge.

BREITENSTEIN, Circuit Judge.

This controversy concerns the validity of a collective bargaining contract made by a local union and the imposition of a trusteeship over the local by its parent international union. The trial court upheld the trusteeship and

* Of the Eastern District of Michigan, sitting by designation.

voided the contract. We affirm the trusteeship and remand for further proceedings to determine the validity of the contract.

The posture of these appeals requires explanation. In D.C. No. 70-520 Gordon, et al., were plaintiffs, and the defendants included Laborers' International Union of North America and Hodge, et al. D.C. No. 72-544 was an action by Associated General Contractors against Laborers' International Union of North America, Local 612. The International Union which was the parent of Local 612 intervened. The trial court consolidated No. 70-520 and No. 72-544 for trial and the two cases were disposed of by one judgment. The Gordon group, which is made up of members of Local 612, has appealed and its appeal is our No. 73-1111. The Hodge group, which is composed of officers of Local 612, has also appealed and its appeal is our No. 72-1112. The International is resisting each appeal. The Associated General Contractors has made no appearance. The situation is such that we cannot say with any assurance whether anyone is appearing before us on behalf of Local 612. The Gordon group and the Hodge group will be referred to as appellants.

Laborers' International Union of North America is a labor organization of about 600,000 members. It is made up of local unions and district councils located throughout the United States and Canada, and is governed by a General Executive Board in accordance with a written constitution. The International has chartered nine locals in Oklahoma. Its constitution provides for the chartering of district councils upon the application of affiliated locals when combination of economic power and effort is advantageous. A district council is a labor organization within the purview of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). See 29 U.S.C. § 402(i).

Local 612, Oklahoma City, was chartered by the International in 1920. In 1968, seven of the Oklahoma locals, not including Local 612, applied for a district council charter. Local 612 objected to the creation of the council and declined to affiliate with it. Acting under its constitution, the International ordered Local 612 to affiliate, and District Council was created.

In 1970, several members of Local 612 sued International, District Council, Local 612, and three of the officers of Local 612 seeking in the alternative authority for Local 612 to withdraw from District Council or an order providing that Local 612 have representation on District Council that would be fairly representative of its membership in proportion to that of the other eight local unions in the council. This case is district court No. 70-520. No significant action was taken in the case until the spring of 1972.

Associated General Contractors of America, Inc., Oklahoma Chapter—Builders Division (Contractors) is an Oklahoma association of building contractors. Early in 1972 District Council notified Contractors that its bargaining committee would meet with their negotiating committee to negotiate the collective bargaining agreements between the Contractors and the locals. Local 612 desired to bargain itself and set up a committee for that purpose. An agreement was reached between the Contractors and Local 612 on March 13, 1972.

On March 27, 1972, the International notified Local 612 that pursuant to Art. IX, § 7 of the International Constitution a hearing would be held on April 10 to determine whether Local 612 should be placed under trusteeship. Three officers of Local 612 appeared at the hearing. The Hearing Panel of the International made specific findings pertaining to the March 13 contract with Contractors, violations of the International's constitution and policies, and other matters. On April 25, the International imposed a trusteeship on Local 612.

On May 3, 1972, the officers of Local 612 filed an answer in the lawsuit which had been pending for nearly two years and in a cross-claim against the International alleged that the imposition of the trusteeship on Local 612 was wrongful. The plaintiffs then amended their complaint to allege the invalidity of the trusteeship and to request an injunction barring the trusteeship. After a hearing, the district court on May 16 entered the requested preliminary injunction.

It should be noted that prior to the negotiations between Local 612 and the Contractors and at a meeting attended by 59 of the over 600 members of Local 612, those present voted 40 to 11 for the appointment of a bargaining committee of its own to negotiate with Contractors. This action occurred in spite of a warning given by the officers of Local 612 that the action would violate the International Constitution. At a July 17 hearing the district court expressed a desire to learn the wishes of the Local 612 membership with regard to its representation in collective bargaining negotiations and directed its magistrate to conduct a meeting of the membership for this purpose. At an August 21 meeting, and after presentation of the conflicting viewpoints, the vote was 157 to 45 in favor of representation by District Council.

On August 8, Contractors brought suit against Local 612 for a declaration under the Labor-Management Relations Act of 1947 (LMRA), 29 U.S.C. § 185(a), that the March 13 agreement between them and Local 612 was valid and binding. This case is district court No. 72-544. The answer of Local 612 admitted the allegations of the complaint and prayed that the contract be upheld and enforced. International then moved to intervene in Contractors' suit and denied the validity of the March 13 contract. The district court permitted the intervention and consolidated action No. 70-520 with action No. 72-544. After a hearing, the court upheld the trusteeship, nullified the contract, and

dissolved the preliminary injunction which it had previously granted. See Gordon v. Laborers' International Union of North America, W.D.Okl., 351 F.Supp. 824.

Appellants attack the imposition of the trusteeship. Title III of LMRDA provides for trusteeships over subordinate labor organizations. Its § 302, 29 U.S.C. § 462, says that trusteeships shall be established and administered only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose, among other things, of "assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization."

After the International's 1966 convention, its General Executive Board ordered that, in the next round of collective bargaining negotiations, health, welfare, and pension plans were to be negotiated for the benefit of all members. District Council took the position that bargaining on these subjects was mandatory under the action of the International. As a result of District Council negotiations all of the Oklahoma locals, except Local 612, became parties to a common Oklahoma Laborers' Health and Welfare Benefit Plan and became covered by the Laborers' Central and Southern States Pension Fund. The March 13 contract between Local 612 and Contractors did not contain the health, welfare, and pension benefits obtained for other Oklahoma locals by the District Council.

Appellants say that our decision in United Brotherhood of Carpenters and Joiners of America v. Brown, 10 Cir., 343 F.2d 872, is controlling and requires reversal. That case was concerned with the imposition by a national union of a trusteeship over a local union because, among other things, the local had failed to affiliate with a district council. The trial court held that the trusteeship was invalid and this court affirmed.

Brown is distinguishable from the case at bar. In Brown the authority of the national to impose the trusteeship was implied from the general authority found in its constitution and bylaws. The court held, 343 F.2d at 882, that § 302 is not satisfied by a general authority and requires that the "organization's constitution and bylaws set forth the circumstances under which a trusteeship may be established over its local unions and the manner or procedure in which it is to be imposed." In the case at bar the International's constitution specifically set forth the circumstances and procedures under which a trusteeship may be imposed. In our opinion those circumstances and procedures are in accord with the requirements of § 302.

In Brown the trusteeship was imposed because the local would not affiliate with the district council and would not raise its dues. The court pointed out that these actions "have nothing whatever to do with collective bargaining." 343 F.2d at 883. Collective bargaining is at the heart of the case before us. The International had established legitimate objectives concerning health, welfare, and pension programs. Through its constitution the International required that bargaining negotiations be conducted by the district council. Local 612 flaunted its disregard of these objectives and rules of the International. After notice to Local 612 and after a hearing at which officers of Local 612 appeared, the General Executive Board made specific findings and concluded that the imposition of a trusteeship was within the power of the International's President under Art. IX, § 7, of its constitution. The record shows that the actions of the union officials were in good faith and were fair and reasonable. In these circumstances the courts are reluctant to substitute their judgment for that of the union officials. Vestal v. Hoffa, 6 Cir., 451 F.2d 706, 709. See also Parks v. International Brotherhood of Electrical Workers, 4 Cir., 314 F.2d 886, 906. In our opinion the International properly imposed the trusteeship and in so doing complied with LMRDA, Title III, § 302, 29 U.S.C. § 462.

[APPENDIX]

Article IV of the International's Uniform District Council Constitution provides for weighted voting in the district councils.[1] The result is that Local 612 has fewer votes in District Council than it would have if delegates were apportioned in direct relationship to the size of each local.[2] Appellants say that the weighted voting violates the equal rights requirements of the Bill of Rights of Labor Organizations, LMRDA, Title I, § 101(a)(1), 29 U.S.C. § 411(a)(1).

The International argues that the court has no jurisdiction to consider this point because of the decision in Calhoun v. Harvey, 379 U.S. 134. Calhoun was concerned with eligibility requirements under LMRDA, Title IV, § 401(e), 29 U.S.C. § 481(e), and held that the exclusive remedy was a suit by the Secretary of Labor. 379 U.S. at 140-141. We are concerned with rights claimed under Title I, § 101, 29 U.S.C. § 411. The differences between Title I and Title IV are such that we believe that Calhoun does not negate jurisdiction in the instant case. In our opinion jurisdiction lies under Title I, § 102, 29 U.S.C. § 412.

The Labor Bill of Rights gives every member of a labor organization equal rights and privileges to attend, participate in, and vote at meetings of the organization of which he is a member. Our concern is not with the rights of members of Local 612 to vote at its meetings. Rather we are concerned with the local's rights to delegates representing it at the district council. In our opinion § 101(a)(1) was not intended to impose a proportional representation system on international unions or their intermediate bodies.

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[1] The provisions pertinent here establish the following entitlement to delegates on the District Council: 2 delegates for 500 members or less, 3 delegates for 501 to 1000 members.

[2] The nine locals making up District Council have the following members: Muskogee 334; Bartlesville 65; Lawton 140; Ponca City 97; Oklahoma City (Local 612) 659; Stillwater 65; Tulsa 822; Enid 42, Vinita 101.

American Federation of Musicians v. Wittstein, 379 U.S. 171, was concerned with a weighted-voting system at an international's annual convention. The Court upheld the weighted voting and said, 379 U.S. at 182, that § 101(a)(3)(B) "authorizes a representative system of government and does not require a town meeting for action by an international or national union." We believe that this reasoning applies to voting at the district council level as well as at an annual convention.

We find no statutory requirement that representation in delegate bodies of labor organizations reflect the proportionate number of members in each subordinate labor organization represented in those bodies. Section 101(a)(1) says that the rights which it recognizes are "subject to reasonable rules and regulations in such organization's constitution and bylaws." Congress did not limit union autonomy in weighting delegate votes. The pertinent provisions of the Uniform District Council Constitution have stood the test of time and should not be abrogated by the courts in the absence of a clear directive from Congress. Disputes between an international and one of its locals are best left for internal settlement. Parks v. International Brotherhood of Electrical Workers, 4 Cir., 314 F.2d 886, 906.

We turn to the question of the validity of the March 13 contract. The district court held, 351 F.Supp. at 834, and we agree, that "International properly decided that the negotiation and implementation of collective bargaining agreements on an area-wide basis through the vehicle of a [district] Council constitutes a desirable objective for the purpose of obtaining uniform standards and conditions of employment for its members."

Appellants argue that the purpose of the trusteeship was to substitute District Council as the bargaining agent for Local 612 in violation of the National Labor Relations Act, 29 U.S.C. § 151 et seq. The answer is that the National Labor Relations Board has exclusive jurisdiction to deter-

mine the question of representation for purposes of collective bargaining. Confederated Independent Unions v. Rockwell-Standard Company, 3 Cir., 465 F.2d 1137, 1140-1141. The cases relied on by the appellants are not in point. National Labor Relations Board v. SuCrest Corporation, 2 Cir., 409 F.2d 765, was a proceeding to enforce a NLRB order. Navarro v. Gannon, 2 Cir., 385 F.2d 512, holds that under LMRDA union members have the right to be free of interference from an international union except where the parent union, in accordance with lawfully established procedures, has imposed a trusteeship. In the case at bar a trusteeship was so imposed.

The district court nullified the March 13 contract because of the failure of a condition subsequent. 351 F.Supp. at 835. The situation requires an explanation. Pursuant to the Economic Stabilization Act of 1970, 12 U.S.C. § 1904, the President created the Laborers' National Craft Board and the Construction Industry Stabilization Committee. The parties to the March 13 contract made it subject to the condition subsequent that it be approved by the Craft Board and the Stabilization Committee. The Craft Board rejected the contract.[3] The Stabilization Committee reviewed the Craft Board action and agreed. We have the strange situation of a collective bargaining agreement being

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[3] Its reasons are stated in Associated General Contractors v. Laborers' International Union, TECA, 476 F.2d 1388, 1391-1392, from which we quote: "The proposed agreement failed to meet the Craft Board criteria for Oklahoma on the following counts. First, the agreement covers a three-year period and would stand as an absolute bar to necessary restructuring. Second, the agreement fails to narrow the economic gap between Tulsa and Oklahoma City and indeed, widens the margin. Third, we have reservations concerning the fact that no provisions have been made for welfare and pension benefits. Even though the rest of Oklahoma is covered by agreements calling for these benefits negotiated by the Oklahoma Laborers' District Council and the Oklahoma Chapter AGC [Contractors]." (sic) The Craft board also questioned the representative status of the negotiating committee purportedly representing Local 612.

disapproved because the wage increase was too small rather than too large.

The Contractors appealed to the Temporary Emergency Court of Appeals. See Associated General Contractors of America, Inc. Oklahoma Chapter—Builders Division v. Laborers' International Union, TECA, 476 F.2d 1388. TECA, in an exhaustive and comprehensive opinion which seems to us to treat the case as one for the review of administrative action held, 476 F.2d at 1407, that absent certain factors, "no order of an economic stabilization program agency should be mandated or subjected to invalidation in any judicial proceedings unless that agency has been made party to such proceedings." The court then said, Ibid., that the Craft Board and Stabilization Committee "may be joined," and reversed and remanded the case for further proceedings consistent with the opinion. Apparently, no one called the attention of TECA to the appeals with which the Tenth Circuit is now concerned.

We find ourselves in an anomalous situation. Appeals have been taken to both TECA and the Tenth Circuit from the same district court judgment. Both appeals deal with the same subject, the validity of the March 13 contract. In TECA the question was compliance with the Economic Stabilization Act. In the Tenth Circuit the question is the authority of Local 612 to make the contract in violation of the rules and policies of the parent union. The Tenth Circuit situation is complicated by the fact that the Contractors have not appeared and the record is so confusing that we are unable to say whether Local 612 is before us. Although we have grave doubt as to the validity of the contract in the circumstances shown by the record before us, we are reluctant to decide the issue.

A strange situation exists when two different appellate courts are reviewing the same district court judgment. TECA found that it had jurisdiction and remanded with directions. Apparently there has been no effort to obtain

certiorari review of the TECA action and its decision is the law of the case. An intolerable situation would result if we came out with a different disposition than did TECA.

One other matter should be mentioned. In its opinion TECA recognizes a possible jurisdictional conflict between the National Labor Relations Board and the agencies created pursuant to the Economic Stabilization Act. See 476 F.2d 1397, n. 8. If the Craft Board and the Stabilization Committee are joined as parties in accordance with the TECA holding, consideration might well be given to the joinder also of the National Labor Relations Board.

We believe that good judicial administration mandates that we avoid any semblance of a conflict with TECA. The best solution which we can contrive is to get the entire question of contract validity back into the district court. We affirm the judgment insofar as it upholds the trusteeship and dissolves the preliminary injunction. On the issue of the validity of the March 13 contract we reverse and remand the case for further proceedings in the light of both this opinion and the TECA opinion.

In each appeal the judgment is affirmed in part and reversed in part. Costs are assessed against the appellants.

APPENDIX C

JANUARY TERM—FEBRUARY 8, 1974

Before Honorable Jean S. Breitenstein and Honorable William E. Doyle, Circuit Judges, and Honorable Talbot Smith, District Judge

WILLIE LEE GORDON, et al.,	)	
	)	
Plaintiffs-Appellants,	)	
v.	)	
	)	
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, et al.,	)	
	)	
Defendants-Appellees,	)	
	)	
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., etc.,	)	Nos. 73-1111
	)	73-1112
Plaintiff,	)	
	)	
v.	)	
	)	
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 612,	)	
	)	
Defendant,	)	
and	)	
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA,	)	
	)	
Intervenor.	)	

These cases are before the Court for consideration of the application of Laborers' International Union of North

America for modification of the opinion of this Court filed November 21, 1973, to eliminate the Order of Remand and statements having been filed by the Associated General Contractors of America, Inc., by Laborers' International Union of North America, and Local 612, and response of Willie Lee Gordon, all pursuant to this Court's Order of January 16, 1974.

The Court also has for consideration in these cases, appellants' petition for rehearing.

Upon consideration whereof, it is the ORDER of this Court that both the application of the Laborers' International Union of North America for modification of this Court's opinion and appellants' petition for rehearing are denied.

HOWARD K. PHILLIPS, Clerk

s/ By: Robert L. Hoecker
Robert L. Hoecker
Chief Deputy Clerk

A true copy

Teste

Howard K. Phillips
Clerk, U. S. Court of
Appeals, Tenth Circuit

By [illegible]
Deputy Clerk

CERTIFICATE OF SERVICE

This is to certify that this Petition for a Writ of Certiorari was served this _____ day of May, 1974, by mailing three copies hereof postage fully paid, to each of the following Attorneys of Record; for Respondent

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